



April 7, 2000

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2000-1363

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134855.

The Texas Department of Criminal Justice (the "TDCJ") received a request for information related to certain former law enforcement personnel currently incarcerated by the TDCJ or by the State of Texas in other states. You claim that the requested information is excepted from disclosure under sections 552.107 and 552.131 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted exemplar.¹

You assert that the requested records are "outside the reach of the Open Records Act" because of the ruling in *Ruiz v. Collins*, No. H-78-987 (S.D. Tex., filed Dec. 11, 1992). The Public Information Act (the "Act"), Government Code Chapter 552, provides that "public information" means information that is collected or maintained by a governmental body in connection with the transaction of official business. Gov't Code § 552.002. The information requested falls within that broad span. This ruling is limited to the application of sections 552.029 and 552.131 and does not consider the applicability and effect of the judgment in *Ruiz*. However, we note that *Ruiz* is still in effect and it prohibits the release of certain "sensitive information," which may include information required to be released under section 552.029. We remind you that section 552.107(2) of the Government Code requires you to withhold information that is made confidential by court order.

In your reply to the requestor dated February 11, 2000, you state that it "is obviously not possible [to physically inspect 150,000 classification folders] due to the huge amount of staff hours that would be required." It is well-established that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 561 at 8 (1990). Moreover, the difficulty of complying with the Act does not determine the

¹You acknowledge that information responsive to the request exists, but state that you could not immediately identify any inmates who fit the request specification. As an exemplar, you provided information regarding a fictitious inmate for our consideration.

availability of information. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (1976); see also Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

We note that TDCJ received the requestor's letter on January 30, 2000. However, this office did not receive TDCJ's request for a decision until March 3, 2000, more than ten business days after TDCJ's receipt of the written request for information. Consequently, you failed to request a decision within the ten business days required by section 552.301(b) of the Government Code. Sections 552.301 and 552.302 of the Government Code require a governmental body to release requested information or to request a decision from the attorney general and state the exceptions that apply within ten business days of receiving a request for information that the governmental body wishes to withhold.

Further, pursuant to section 552.301(e)(1)(D), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office copies or representative samples of the specific information that was requested. A copy of the specific information requested, or the representative sample, described by 552.301 cannot be fabricated. A fictitious exemplar does not satisfy the statutory requirement. A governmental body must provide actual responsive information.

A governmental body's failure to request a decision or to submit the information required in section 552.301(e) within the specified time limits results in the legal presumption that the information is public and must be released. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. Gov't Code § 552.302. Waiver of applicable permissive exceptions may be a consequence of failure to comply with your obligations under section 552.301.

Section 552.131 is a confidentiality provision which could serve as a basis to withhold information. However, without the specific information requested, or a representative sample, submitted for our review, we cannot conclude there exists a compelling interest to overcome the presumption that the information at issue must be released. In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be released, TDCJ must release to the requestor the information responsive to the request. We caution TDCJ that section 552.352 prescribes criminal penalties for the disclosure of confidential information.

TDCJ also seeks an opinion from this office regarding its duty to act as an intermediary between the requestor and inmates TDCJ has identified as responsive to the request. As this is not a request for a decision under section 552.301, we do not address it in an open records ruling. See Gov't Code § 402.042.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

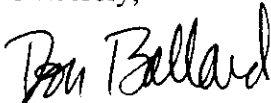
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Don Ballard
Assistant Attorney General
Deputy Chief, Open Records Division

JDB/CHS/ljp

Ref: ID# 134855

cc: Mr. Daniel Robb
14902 Tallow Forest Court
Houston, Texas 77062
(w/o enclosures)